उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.622/2007

APPELLANT Hariyar Sai Gond, aged about 62 years, S/o Shri Jangi Ram Gond, R/o Village Umeshwarpur, P.S. Prem Nagar, District Sarguja (C.G.)

Versus

RESPONDENT The State of Chhattisgarh, Through P.S. Prem Nagar, District Sarguja (C.G.)

CRIMINAL APPEAL u/s 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973

D.B.: HON'BLE SHRI L.C. BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(16.08.2007)

L.C. Bhadoo, J:-

Shri Narendra Chandel, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

Heard on I.A. No.01/2007 for condonation of delay in filing this appeal.

As per the office report, there is delay of 2629 days in filing this appeal.

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मामला क्रमांक Cr.A. No. 622/07. सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the appellant submits that he has been engaged by the High Court Legal Aid Committee. Being time barred, the accused has sent a letter for delay in filing this appeal. The letter of the accused sent through Superintendent of Police, Central Jail, Ambikapur, is also annexed with this application and it has been specified that the accused/appellant is a poor person and for filing the appeal, the certified copy of the judgment was taken by his son, but on account of illness, poor financial condition and illiteracy, he could not file the appeal and thereafter, accused was able to obtain a copy of the judgment on 25/5/2007 to file the appeal.

In view of the grounds mentioned in the application as well as letter sent by the accused through Superintendent of Police, Central Jail, Ambikapur, we are of the considered opinion that the delay in filing the appeal should be condoned.

Delay is condoned.

The appeal is admitted for consideration.

With the consent of the counsel for the parties, as the appellant is in jail since March 1997, the appeal is heard finally.

1. This appeal is directed against the judgment of conviction and order of sentence dated 7.3.2000 passed by the Additional Sessions Judge, Surajpur, District Sarguja (C.G.), in Sessions Trial No.344/1997, whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for the offence punishable u/s 302 I.P.C., for committing murder of his wife namely Bifaiya Bai, sentenced him to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश. 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

undergo imprisonment for life and to pay a fine of Rs.1000/- in default of payment of fine, to further undergo R.I. for 6 months.

2. Case of the prosecution in brief is that the deceased namely Bifaiya Bai was the wife of accused/appellant. The accused alongwith his wife, son- Sitaram and Saroj Kumar and Guddi @ Pranpati, son and daughter of Sitaram, were residing together. On 22/3/1997 at about 8:00 p.m., after taking dinner, Sitaram went to the vicinity of village. At that time, his father (accused/appellant), mother – Bifaiya Bai (since deceased), son – Saroj Kumar and daughter-Guddi were at the residence. After Sitaram left the house, accused – Hariyar Sai Gond and deceased – Bifaiya Bai started quarrelling. The accused/appellant attacked Bifaiya Bai with an axe. When Sitaram returned to the house at about 9:00 p.m, he saw Bifaiya Bai lying in the courtyard of the house, blood was oozing out of the injury on the head. Accused/appellant was not present in the house. Sitaram was informed by his Uncle namely Ramsai that at about 8:30 p.m., the accused/appellant came to his house, and he said that on account of quarrel between him and his wife, he attacked Bifaiya Bai with an axe, as a result of which, she has died. The First Information Report (Ex.P/1) was lodged by Sitaram. The Investigating Officer after registering the case under Section 302 of the IPC, left for the scene of

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occurrence after giving notices (Ex.P/1-A) to the witnesses and prepared inquest (Ex.P/2) on the body of the deceased. Plain soil and blood stained soil were taken into possession under Ex.-P/3. Weapon of offence i.e. axe was seized under Ex.P/4, broken bangles of the deceased were seized from the place of occurrence under Ex.P/5. Body of Bifaiya Bai was sent for postmortem examination to the Primary Health Centre, Prem Nagar under Ex.P/6-A, where Dr. Amrit Lal Soni conducted the postmortem. He opined that the cause of death is shock and haemorrhage due to head injury caused by hard and sharp object and death was homicidal in nature. He prepared postmortem report under Ex.P/6. Site plan (Ex.P/8) was prepared by the Investigating Officer. The recovered articles were sent to the Forensic Science Laboratory from where report (Ex.-P/13) was received and Serologist report (Ex.P/14) was received.

3. After completion of the usual investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur, who in turn committed the case to the Sessions Judge, Sarguja, from where learned Additional Sessions Judge received the case on transfer for trial.

4. The prosecution in order to establish the charge against accused/appellant examined 10 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

material appearing against him in the prosecution evidence. However, he admitted that he alongwith his wife consumed liquor. Ultimately, he stated that he is innocent and has been falsely implicated in the crime in question.

5. Learned Additional Sessions Judge after hearing respective counsel and perusal of the record convicted and sentenced the accused as aforementioned.

6. Learned counsel for the accused/appellant argued that in this case, the prosecution has utterly failed to connect the accused/appellant with the crime in question. He also argued that the trial Court has convicted the accused/appellant placing reliance on extra judicial confession made by him. On scrutiny of the evidence of witnesses, the prosecution has failed to establish that the accused/appellant made extra judicial confession before any of the witnesses. He further argued that even though in the FSL report, it has come that the axe and *lungi* of the accused were stained with blood, but as per the Serologist report, on account of disintegration of the blood, it was not possible to give any opinion regarding origin of the blood.

7. On the other hand, learned counsel for the State supported the judgment of the trial Court.

8. We have heard learned counsel for the respective parties and perused the prosecution evidence available on record.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9. PW-1 – Sitaram, son of the deceased and accused/appellant, who lodged the report – Ex.P/1 in the Police Station, has stated that after taking his dinner, he had gone out of the house leaving behind his mother, father and his children namely Saroj Kumar and Guddi alias Pranpati. Regarding extra judicial confession made by his father before him, he has turned hostile and in cross-examination, he has stated that he does not know whether his father and mother quarrelled after consuming liquor. On cross-examination by the A.P.P., he stated that on enquiry from his father about the incident, he disclosed that on account of some quarrel between him and his wife, after consuming liquor, he attacked her, but in the cross-examination by the counsel for the accused, he stated that his father did not say anything about the attack made by him on his wife. On the contrary, he has stated that when the villagers were sitting in his house, accused/appellant came in the house and asked that what has happened to his wife, then villagers replied that somebody has murdered her. The body was lying outside the house, thus, this witness has not corroborated the First Information Report lodged by him. Neither his evidence is reliable or cogent on the point that his father made extra judicial confession before him.

10. PW-3 – Madansai has not supported the prosecution case, who is another son of accused/appellant. He has stated that

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when the villagers enquired about the incident from the accused/appellant and his brother, they stated that they did not know how Bifaiya Bai sustained injuries and how she died. He himself did not speak to his father and brother.

11. PW-5 – Sarjuram has also not supported the case of the prosecution and has stated that it is correct that the *maarpeet* did not take place in his presence. PW-6 – Pranpati, daughter of Sitaram (child witness), has turned hostile and on cross-examination by the counsel for the accused, she stated that she did not see the *maarpeet*, therefore, she does not know as to who committed the murder of the deceased. PW-9 – Arjun Ram has turned hostile and has stated that the accused did not disclose anything about the incident. PW-10 – Baran has not supported the prosecution case and in cross-examination, he did not disclose anything as to who attacked the deceased, rather he stated that the accused said to him that somebody has murdered his wife.

12. Therefore, virtually there is no evidence in this case to connect the accused/appellant with the crime in question.

13. The law on the point of extra judicial confession is well settled. In order to place reliance on extra judicial confession, it must be voluntary and true and the witness before whom extra judicial confession is said to have been made must be truthful and unbiased and not even remotely

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inimical to accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, words spoken are clear, and unmistakably that the accused is the offender and nothing is omitted by the witness which may militate against it, after subjecting the evidence to rigorous test on the touchstone of credibility.

14. As far as blood which was found on the axe is concerned, the axe was recovered from the place of occurrence and not at the instance of the accused/appellant. Moreover, the Serologist report shows that the origin of blood was not detected and there is no evidence on record to connect the accused/appellant with the crime in question, unless Serologist report suggests that the blood, which was found on the *Lungi* of the accused/appellant was human blood and that too of the blood group of the deceased. Solely on the ground that the blood was found on his *Lungi*, the accused/appellant cannot be connected with the crime in question.

15. For the foregoing reasons, it is established that the prosecution has not been able to bring on record any legal cogent and clinching evidence to connect the accused/appellant with the crime in question, therefore, findings of the trial Court convicting the accused/appellant under Section 302 of IPC cannot be sustained.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	16. In the result, the appeal succeeds. 17. The conviction and sentence imposed on accused/appellant under Section 302 of the IPC are set aside. He is acquitted of the said charge. The accused/appellant is in detention since March 1997, therefore, he be set at liberty forthwith, if not required in any other case. Sd/- L.C.BHADOO Judge Sd/- Sunil Kumar Sinha Judge	
Shyna		

GRPRJ — FS/246— 2/2007 — 50,000.